

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

WP(C).No. 22086 of 2007(D)

OS.101/2005 of PRINCIPAL MUNSIFF,ALAPPUZHA

PETITIONER:

**PEETHAMBARAN, S/O CHIRIKANDAN,
AGED 68, RESIDING AT CHOLAMPARAMBIL,
NORTH ARYADMURI, KOMALAPURAM VILLAGE,
AMBALAPPUZHA TALUK.**

BY ADV. SRI.K.V.SADANANDA PRABHU

RESPONDENTS:

- 1. PREMNATH, AGED ABOUT 55 YEARS,
S/O BHARGAVI, RESIDING AT KAITHAVALAPPIL,
AVALUKUNNU P.O., SOUTH ARYADMURI,
KOMALPURAM VILLAGE, AMBALAPPUZHA TALUK.**
- 2. OMANKUTTAN, AGED ABOUT 30,
S/O INDRANI, CHITTUVELIKKAKATH,
AVULUKKUNNU P.O., SOUTH ARYADMURI,
KOMALAPURAM VILLAGE.**
- 3. NALAMADOM KSHETRAYOGAM,
SOUTH ARYADMURI, KOMALPURAM VILLAGE,
REPRESENTED BY DHANAPALAN, S/O KRISHNAN, AGED 56,
RESIDING AT THARAYIL, SOUTH ARYADMURI,
KOMALAPURAM VILLAGE.**
- 4. RAJESH, AGED 30, S/O VISWANATHAN,
KAITHAVALAPPIL, SOUTH ARYADMURI,
(SECRETARY, NALAMADAM KSHETRAYOGAM)**
- 5. PONNU PILLAI, S/O KRISHNAN, AGED 47,
THARAYIL, SOUTH ARYADMURI,
(TREASURER NALAMADAM KSHETRAYOGAM)**

BY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

M.N. KRISHNAN, J.
= = = = =
W.P.C. NO. 22086 OF 2007
= = = = =
Dated this the 18th day of July, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside Ext.P1 order passed by the Principal Munsiff, Alappuzha. The suit is one for partition and a perusal of the papers would reveal that after letting in evidence the matter had been heard and posted for judgment. At that stage the Court suo motu reposted the matter and directed the plaintiff to implead the legal representatives of one Kunjan as necessary party to the proceedings.

2. The case of the plaintiff is that the property was obtained by a document No.1054/86 M.E. by Kochukrishnan, Kunjan and Chirikandan. According to the plaintiff, Kunjan died issueless and that right also devolved upon other two brothers and therefore they have filed a suit for partition. There were previous suits pertaining to the property and there are some observations that Kunjan has legal representatives. When the specific case of the plaintiff is to

the effect that Kunjan's right on his death devolved upon other two brothers, in fairness, the Court below should have reposted the matter for clarification of the point permitting the parties to advance argument on that behalf and thereafter decide and direct the plaintiff if necessary to implead the parties. Without resorting to that the Court had done it and this will detrimentally affect the case of the plaintiff especially when there is no such contention for any of the parties and no issues had been framed regarding the non-joinder of necessary parties. Therefore, the order under challenge is set aside and the matter is remitted back to the Principal Munsiff, Alappuzha to hear the plaintiff as well as the contesting defendants after giving them fair opportunities and then decide the matter. In case it finds that additional issue has to be framed that may be permitted and direct the plaintiff to take steps in accordance with law.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.